

Jul 15, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STEPHEN C.,¹

Plaintiff,

vs.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

No. 2:20-cv-00285-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 16, 18

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

² Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 Before the Court are the parties' cross-motions for summary judgment. ECF
2 Nos. 16, 18. The parties consented to proceed before a magistrate judge. ECF No.
3 6. The Court, having reviewed the administrative record and the parties' briefing,
4 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
5 motion, ECF No. 16, and grants Defendant's motion, ECF No. 18.

6 JURISDICTION

7 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
8 1383(c)(3).

9 STANDARD OF REVIEW

10 A district court's review of a final decision of the Commissioner of Social
11 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
12 limited; the Commissioner's decision will be disturbed "only if it is not supported
13 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
14 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
15 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
16 (quotation and citation omitted). Stated differently, substantial evidence equates to
17 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
18 citation omitted). In determining whether the standard has been satisfied, a
19 reviewing court must consider the entire record as a whole rather than searching
20 for supporting evidence in isolation. *Id.*

1 In reviewing a denial of benefits, a district court may not substitute its
2 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
3 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
4 rational interpretation, [the court] must uphold the ALJ’s findings if they are
5 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
6 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
7 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
8 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
9 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
10 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
11 *Sanders*, 556 U.S. 396, 409-10 (2009).

12 **FIVE-STEP EVALUATION PROCESS**

13 A claimant must satisfy two conditions to be considered “disabled” within
14 the meaning of the Social Security Act. First, the claimant must be “unable to
15 engage in any substantial gainful activity by reason of any medically determinable
16 physical or mental impairment which can be expected to result in death or which
17 has lasted or can be expected to last for a continuous period of not less than twelve
18 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
19 impairment must be “of such severity that he is not only unable to do his previous
20 work[,] but cannot, considering his age, education, and work experience, engage in

1 any other kind of substantial gainful work which exists in the national economy.”

2 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

3 The Commissioner has established a five-step sequential analysis to
4 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
5 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
6 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
7 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
8 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
9 404.1520(b), 416.920(b).

10 If the claimant is not engaged in substantial gainful activity, the analysis
11 proceeds to step two. At this step, the Commissioner considers the severity of the
12 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
13 claimant suffers from “any impairment or combination of impairments which
14 significantly limits [his or her] physical or mental ability to do basic work
15 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
16 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
17 however, the Commissioner must find that the claimant is not disabled. *Id.*

18 At step three, the Commissioner compares the claimant’s impairment to
19 severe impairments recognized by the Commissioner to be so severe as to preclude
20 a person from engaging in substantial gainful activity. 20 C.F.R. §§

1 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
2 severe than one of the enumerated impairments, the Commissioner must find the
3 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

4 If the severity of the claimant's impairment does not meet or exceed the
5 severity of the enumerated impairments, the Commissioner must pause to assess
6 the claimant's "residual functional capacity." Residual functional capacity (RFC),
7 defined generally as the claimant's ability to perform physical and mental work
8 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
9 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
10 analysis.

11 At step four, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing work that he or she has performed in
13 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
14 If the claimant is capable of performing past relevant work, the Commissioner
15 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
16 If the claimant is incapable of performing such work, the analysis proceeds to step
17 five.

18 At step five, the Commissioner considers whether, in view of the claimant's
19 RFC, the claimant is capable of performing other work in the national economy.
20 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,

1 the Commissioner must also consider vocational factors such as the claimant's age,
2 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
3 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
4 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
5 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
6 work, analysis concludes with a finding that the claimant is disabled and is
7 therefore entitled to benefits. *Id.*

8 The claimant bears the burden of proof at steps one through four above.
9 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
10 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
11 capable of performing other work; and 2) such work "exists in significant numbers
12 in the national economy." 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
13 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

14 **ALJ'S FINDINGS**

15 On April 3, 2017, Plaintiff applied both for Title II disability insurance
16 benefits and Title XVI supplemental security income benefits alleging a disability
17 onset date of January 19, 2017. Tr. 15, 62-63, 193-210. The applications were
18 denied initially and on reconsideration. Tr. 106-09, 113-26. Plaintiff appeared
19 before an administrative law judge (ALJ) on September 24, 2019. Tr. 33-61. On
20 October 2, 2019, the ALJ denied Plaintiff's claim. Tr. 12-32.

1 At step one of the sequential evaluation process, the ALJ found Plaintiff,
2 who met the insured status requirements through June 30, 2017, has not engaged in
3 substantial gainful activity since January 19, 2017. Tr. 17. At step two, the ALJ
4 found that Plaintiff has the following severe impairments: schizoaffective disorder,
5 other affective disorder(s), and anxiety disorder(s). *Id.*

6 At step three, the ALJ found Plaintiff does not have an impairment or
7 combination of impairments that meets or medically equals the severity of a listed
8 impairment. Tr. 18. The ALJ then concluded that Plaintiff has the RFC to perform
9 a full range of work with the following limitations:

10 He can perform simple routine tasks [in] two-hour increments. He
11 can have occasional superficial contact with the public, but working
12 with the public should not be a focus of his job. He can work in the
same room with coworkers, but without coordination of work activity.
He can adapt to simple and few workplace changes.

13 Tr. 19.

14 At step four, the ALJ found Plaintiff is unable to perform any of his past
15 relevant work. Tr. 25. At step five, the ALJ found that, considering Plaintiff's
16 age, education, work experience, RFC, and testimony from the vocational expert,
17 there were jobs that existed in significant numbers in the national economy that
18 Plaintiff could perform, such as kitchen helper, laundry worker, and industrial
19 cleaner. Tr. 26. Therefore, the ALJ concluded Plaintiff was not under a disability,
20

1 as defined in the Social Security Act, from the alleged onset date of January 19,
2 2017, through the date of the decision. *Id.*

3 On June 17, 2020, the Appeals Council denied review of the ALJ's decision,
4 Tr. 1-6, making the ALJ's decision the Commissioner's final decision for purposes
5 of judicial review. *See* 42 U.S.C. § 1383(c)(3).

6 ISSUES

7 Plaintiff seeks judicial review of the Commissioner's final decision denying
8 him disability insurance benefits under Title II and supplemental security income
9 benefits under Title XVI of the Social Security Act. Plaintiff raises the following
10 issues for review:

- 11 1. Whether the ALJ properly evaluated the medical opinion evidence; and
- 12 2. Whether the ALJ properly evaluated Plaintiff's symptom claims.

13 ECF No. 16 at 2.

14 DISCUSSION

15 A. Medical Opinion Evidence

16 Plaintiff contends the ALJ erred in her consideration of the opinions of
17 Phyllis Sanchez, Ph.D., and Kayleena Nelmark, Psy.D. ECF No. 16 at 2-15. As
18 an initial matter, for claims filed on or after March 27, 2017, new regulations apply
19 that change the framework for how an ALJ must evaluate medical opinion
20 evidence. *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017

1 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 2017); 20 C.F.R. §§ 404.1520c,
2 416.920c. The new regulations provide that the ALJ will no longer “give any
3 specific evidentiary weight...to any medical opinion(s)...” *Revisions to Rules*,
4 2017 WL 168819, 82 Fed. Reg. 5844, at 5867-68; *see* 20 C.F.R. §§ 404.1520c(a),
5 416.920c(a). Instead, an ALJ must consider and evaluate the persuasiveness of all
6 medical opinions or prior administrative medical findings from medical sources.
7 20 C.F.R. §§ 404.1520c(a), (b), 416.920c(a) (b). The factors for evaluating the
8 persuasiveness of medical opinions and prior administrative medical findings
9 include supportability, consistency, relationship with the claimant (including
10 length of the treatment, frequency of examinations, purpose of the treatment,
11 extent of the treatment, and the existence of an examination), specialization, and
12 “other factors that tend to support or contradict a medical opinion or prior
13 administrative medical finding” (including, but not limited to, “evidence showing a
14 medical source has familiarity with the other evidence in the claim or an
15 understanding of our disability program’s policies and evidentiary requirements”).
16 20 C.F.R. §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5).

17 Supportability and consistency are the most important factors, and therefore
18 the ALJ is required to explain how both factors were considered. 20 C.F.R. §§
19 404.1520c(b)(2), 416.920c(b)(2). Supportability and consistency are explained in
20 the regulations:

1 (1) *Supportability*. The more relevant the objective medical evidence
2 and supporting explanations presented by a medical source are to
3 support his or her medical opinion(s) or prior administrative medical
4 finding(s), the more persuasive the medical opinions or prior
5 administrative medical finding(s) will be.

6 (2) *Consistency*. The more consistent a medical opinion(s) or prior
7 administrative medical finding(s) is with the evidence from other
8 medical sources and nonmedical sources in the claim, the more
9 persuasive the medical opinion(s) or prior administrative medical
10 finding(s) will be.

11 20 C.F.R. §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2). The ALJ may, but is not
12 required to, explain how the other factors were considered. 20 C.F.R. §§
13 404.1520c(b)(2), 416.920c(b)(2). However, when two or more medical opinions
14 or prior administrative findings “about the same issue are both equally well-
15 supported ... and consistent with the record ... but are not exactly the same,” the
16 ALJ is required to explain how “the other most persuasive factors in paragraphs
17 (c)(3) through (c)(5)” were considered. 20 C.F.R. §§ 404.1520c(b)(3),
18 416.920c(b)(3).

19 *1. Dr. Sanchez*

20 There are two February 2017 DSHS documents in the record; Plaintiff
contends both documents were completed by Dr. Sanchez, ECF No. 16 at 4, while
the ALJ found one of the documents was completed by Donita Weddle, a disability
specialist, rather than Dr. Sanchez, Tr. 23-24. The document at issue is a DSHS
review of medical evidence, and notes a referring disability specialist, Donita

1 Weddle, and lists Dr. Sanchez as the assigned contractor. Tr. 742. The document
2 lists two medical reports, one of which is a February 21, 2017 examination by Dr.
3 John Arnold, and the document states Dr. Arnold is a psychologist, and the
4 comment box states “I extrapolated the ratings and limitations the best I could,
5 based on the 2/21/17 notes. Please opine. Thanks.” *Id.* The boxes below the
6 comment box are incomplete, while the remainder of the questionnaire is
7 completed. Tr. 742-44. There are no additional comments, and the document does
8 not contain a signature line. Tr. 744. Defendant appears to concede that the form
9 was completed by Dr. Sanchez or that Dr. Sanchez adopted the opinion, ECF No.
10 18 at 18, and as such, the opinion will be treated as an opinion rendered by Dr.
11 Sanchez.

12 On February 28, 2017, Dr. Sanchez, a reviewing psychologist, reviewed
13 some of Plaintiff’s records and rendered an opinion on Plaintiff’s functioning and
14 eligibility for DSHS benefits. Tr. 318, 742-44. The first form states Plaintiff is
15 “higher functioning than these ratings suggest particularly his cognition,” notes a
16 medical doctor did not fill the form out, and opines the one-year duration is “fine”
17 as long as Plaintiff remains in mental health treatment. Tr. 18. In the second form,
18 Dr. Sanchez found Plaintiff has schizoaffective disorder, and rule out bipolar one
19 and unspecified anxiety disorder. Tr. 744. Dr. Sanchez opined Plaintiff has no to
20 mild limitations in his ability to understand, remember, and persist in tasks by

1 following very short and simple instructions, learning new tasks, and performing
2 routine tasks without special supervision; moderate limitations in his ability to
3 understand, remember, and persist in tasks by following detailed instructions,
4 adapting to changes in a work setting, making simple work-related decisions, being
5 aware of normal hazards and taking appropriate precautions, asking simple
6 questions or requesting assistance, setting realistic goals and planning
7 independently; and marked limitations in his ability to perform activities within a
8 schedule, maintain regular attendance, and be punctual within customary
9 tolerances, communicate and perform effectively in a work setting, maintain
10 appropriate behavior in a work setting, and complete a normal workday/workweek
11 without interruptions from psychologically based symptoms. Tr. 743. Dr. Sanchez
12 opined Plaintiff's overall severity rating is a four, and his functional symptoms are
13 all rated as fours as well.³ Tr. 744. The ALJ found Dr. Sanchez's opinions were
14 unpersuasive, except to agree with the portions of the opinion that found Plaintiff
15 had no to mild limitations. Tr. 24.

16
17
18 ³ While the questionnaire does not list the definitions of the numerical ratings,
19 WAC 388-449-0035 provides the definition of the severity ratings, and defines a
20 rating of four as marked.

1 First, the ALJ found Dr. Sanchez's opinions were not supported by the cited
2 objective evidence. Tr. 24. Supportability is one of the most important factors an
3 ALJ must consider when determining how persuasive a medical opinion is. 20
4 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). The more relevant objective evidence
5 and supporting explanations that support a medical opinion, the more persuasive
6 the medical opinion is. 20 C.F.R. §§ 404.1520c(c)(1), 416.920c(c)(1). The only
7 records Dr. Sanchez reviewed were a February 21, 2017 medical record from
8 psychologist Dr. John Arnold, and a January 19, 2017 record from Mr. John
9 Laughlin, a physician's assistant. Tr. 742. The ALJ noted Dr. Arnold's
10 examination indicated Plaintiff had normal speech, memory, thought processes,
11 and behavior, although he had a depressed affect and only fair concentration. Tr.
12 24 (citing Tr. 363-68). The ALJ found Dr. Arnold's examination provided an
13 inadequate basis for limitations set forth in the opinion. Tr. 24. However, the ALJ
14 did not acknowledge Plaintiff's reported hallucinations and delusions. Tr. 367.

15 The January 19, 2017 medical record discussed Plaintiff's reported
16 symptoms including auditory hallucinations, impaired sleep, and spending most of
17 his time in bed, and Plaintiff was noted as having a blunted affect, not engaging in
18 any extra conversation, and he was anxious/worried, with only fair
19 insight/judgment, although he had normal orientation, speech, language, fund of
20 knowledge, thought processes, memory, and attention/concentration. Tr. 320-24.

1 The questionnaires do not cite to any other evidence to support the opinion that
2 Plaintiff has multiple marked limitations. Although the two cited records contain
3 some abnormalities, given the generally normal mental status examinations despite
4 the reported hallucinations, the ALJ's finding that Dr. Sanchez's opinions were
5 inconsistent with the cited objective evidence was a specific and legitimate reason,
6 supported by substantial evidence, to reject the opinions. *See Holohan v.*
7 *Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001); *Bray v. Comm'r of Soc. Sec.*
8 *Admin.*, 554 1219, 1228 (9th Cir. 2009).

9 Second, the ALJ found Dr. Sanchez's opinions were inconsistent with the
10 evidence of Plaintiff's improvement with treatment. Tr. 24. Consistency is one of
11 the most important factors an ALJ must consider when determining how
12 persuasive a medical opinion is. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2).
13 The more consistent an opinion is with the evidence from other sources, the more
14 persuasive the opinion is. 20 C.F.R. §§ 404.1520c(c)(2), 416.920c(c)(2). At the
15 time of Dr. Arnold's examination, Plaintiff reported he had only recently started
16 treatment, which had been beneficial, and he reported being hopeful he would be
17 able to work in the future. Tr. 24 (citing Tr. 363-68). The ALJ found Plaintiff had
18 significant improvement after beginning treatment. Tr. 24. While Plaintiff had
19 more significant symptoms prior to his alleged onset date, the ALJ noted Plaintiff
20 found his psychiatric medications "very helpful," and Plaintiff reported

1 hallucinations were not a problem with his medications. Tr. 20. The mental status
2 findings largely reflected normal mood, affect, speech, thoughts, memory, and
3 concentration, and continued improvement with treatment. Tr. 23, 336, 358, 361,
4 371, 425. Plaintiff's symptoms generally improved when he was not putting
5 himself in any situations that increased his symptoms. Tr. 510, 515. When
6 Plaintiff increased his activities, by trying to work or socialize, he often saw an
7 increase in his anxiety and hallucinations, but with ongoing treatment, he reported
8 being able to manage the symptoms. Tr. 430, 436, 704, 724-25, 805, 807.

9 The ALJ found Dr. Sanchez's opinions were inconsistent with Plaintiff's
10 "prolonged state of stability beginning around May 2017," which included Plaintiff
11 socializing, exercising, and engaging in social activities, certification studies, and
12 musical performances. Tr. 24. Plaintiff began to demonstrate more sustained
13 improvement after May 2017; Plaintiff reported not experiencing intrusive
14 thoughts nor other psychotic symptoms in May 2017, Tr. 531, and reported
15 ongoing improvement with medication in the following months, Tr. 545, 657, 673,
16 757, 776. Plaintiff finished reading a book for a certification program, and
17 reported going to the gym more, socializing more, writing and playing music,
18 making videos to go with his music, cycling, exercising, and planning to attend
19 college. Tr. 663, 693, 704, 718, 721, 732, 788. Beginning in the summer of 2017,
20 several of Plaintiff's counseling sessions were cut short because "he is really doing

1 okay,” and Plaintiff did not have any psychotherapy issues to talk about. Tr. 668.
2 In March 2018, Plaintiff reported feeling more stable than he has felt in over seven
3 years. Tr. 717. While Plaintiff had periods of ongoing symptoms, the ALJ
4 reasonably found Plaintiff overall had sustained improvement. This was a specific
5 and legitimate reason, supported by substantial evidence, to reject Dr. Sanchez’s
6 opinions. *See Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th
7 Cir. 2004).

8 Third, the ALJ gave less weight to Dr. Sanchez’s opinions than she gave to
9 the opinions of State agency psychological consultants Michael Brown, Ph.D., and
10 Kristine Harrison, Psy.D, because the other opinions were more persuasive, better
11 supported, and more consistent with the evidence. Tr. 24. Consistency and
12 supportability are the two most important factors when considering the
13 persuasiveness of medical opinions. 20 C.F.R. §§ 404.1520c(b)(2),
14 416.920c(b)(2). Dr. Brown opined Plaintiff’s mental health symptoms were
15 projected to be non-severe within 12 months of the onset date. Tr. 74-75. Dr.
16 Harrison opined Plaintiff had no more than moderate limitations in any area of
17 functioning. Tr. 101-03. Both consultants opined there was insufficient evidence

1 to assess Plaintiff's functioning prior to January 2017.⁴ Tr. 68, 99-100. The ALJ
2 found Dr. Brown and Dr. Harrison's opinions are more consistent with the
3 objective evidence and overall evidence than Dr. Sanchez's opinion. Tr. 24. As
4 discussed *supra*, the ALJ found Dr. Sanchez's opinion was inconsistent with the
5 objective medical evidence and Plaintiff's improvement with treatment. The ALJ
6 also noted Plaintiff's activities of daily living demonstrate his improvement with
7 treatment, as Plaintiff was able to engage in musical performances, exercise, other
8 social activities, and study. *Id.*

9 Plaintiff contends the ALJ erred in giving more weight to Dr. Brown and Dr.
10 Harrison's opinions, because the opinions were not consistent with one another.
11 ECF No. 16 at 7-8, 11-12. In April 2017, Dr. Brown projected that Plaintiff's
12 symptoms would be non-severe by January 2018. Tr. 74-75. In June 2017, Dr.
13 Harrison reviewed additional medical records that demonstrated some ongoing
14 symptoms, and found Plaintiff had no more than moderate limitations based on the
15 evidence. Tr. 97-100. While Dr. Harrison found Plaintiff had some limitations
16

17 ⁴ Plaintiff's alleged an onset date of January 19, 2017, Tr. 194, which is also
18 reflected throughout the record, Tr. 15, 64, 227, however the analyses in the
19 disability determination explanations indicate an alleged onset date of June 15,
20 2013, Tr. 66, 73.

1 given the new evidence, both opinions are consistent with a finding of non-
2 disability. The ALJ considered both Dr. Brown's and Dr. Harrison's opinion, and
3 set forth reasoning for finding the opinions more persuasive than Dr. Sanchez's
4 opinion. Tr. 24-25. Plaintiff also argues Dr. Brown and Dr. Harrison did not have
5 access to additional medical records, including Dr. Nelmark's opinion and
6 treatment records. ECF No. 16 at 12 (citing Tr. 557-61, 711-37, 745-814); ECF
7 No. 19 at 3-4. However, the cited records demonstrate Plaintiff's improvement
8 with treatment; Plaintiff reported his symptoms were largely under good control,
9 and he was tolerating his medication well, and Plaintiff's mental status
10 examinations were generally normal. Tr. 711-37, 749-58. Plaintiff reported
11 socializing more, planning to go to college classes in person, and though his
12 increased activities caused an increase in his symptoms, he was able to manage the
13 symptoms and his provider considered Plaintiff's symptoms to be largely stable.
14 Tr. 704-05, 707. Plaintiff also reported exercising more and going out for walks.
15 Tr. 706. Although he reported auditory hallucinations at times, Plaintiff denied
16 hallucinations at many appointments. Tr. 711-37, 749-58. In August 2018,
17 Plaintiff reported having an absence of depression for six months and asked to
18 decrease his medication, Tr. 753, though he later needed to change his medication
19 due to increased depression in May 2019, Tr. 782. In 2019, despite some ongoing
20 thought disturbance, Plaintiff was noted as improved, and he had a normal mental

1 status examination. Tr. 770-71. The ALJ reasonably found Dr. Brown and Dr.
2 Harrison's opinions are more consistent with the evidence than Dr. Sanchez's
3 opinions. This was a specific and legitimate reason, supported by substantial
4 evidence, to reject Dr. Sanchez's opinions. *See Nguyen v. Chater*, 100 F.3d 1462,
5 1464 (9th Cir. 1996).

6 2. *Dr. Nelmark*

7 On May 3, 2018, Dr. Nelmark, a treating psychologist, rendered an opinion
8 on Plaintiff's functioning. Tr. 557-61. She diagnosed Plaintiff with
9 schizoaffective disorder, bipolar type. Tr. 560. Dr. Nelmark opined Plaintiff has
10 mild limitations in his ability to understand and remember simple instructions;
11 moderate limitations in his ability to carry out simple instructions; marked
12 limitations in his ability to make judgements on simple work-related decisions,
13 understand, remember, and carry out complex instructions, and interact
14 appropriately with the public, supervisors, and coworkers; and extreme limitations
15 in his ability to make judgements on complex work-related decisions and respond
16 appropriately to usual work situations and to changes in a routine work setting. Tr.
17 557-58. She further opined Plaintiff cannot be exposed to too much stimulation,
18 requires quiet and rest, cannot sustain energy longer than a one to two-hour period,
19 work would likely be too de-stabilizing and he is unable to work full-time, and she

1 is unsure how long she expects Plaintiff would be unable to work full-time. Tr.
2 559-60.

3 On December 12, 2018, Dr. Nelmark, rendered another opinion on
4 Plaintiff's functioning. Tr. 745-48. She again diagnosed Plaintiff with
5 schizoaffective disorder. Tr. 747. Dr. Nelmark opined Plaintiff has slight
6 limitations in his ability to understand, remember, and carry out short, simple
7 instructions, and interact appropriately with the public and coworkers; moderate
8 limitations in his ability to interact appropriately with supervisors; and marked
9 limitations in his ability to understand and remember detailed instructions, carry
10 out detailed instructions, make judgments on simple work-related decisions,
11 respond appropriately to work pressures in a usual work setting, and respond
12 appropriately to changes in a routine work setting. Tr. 745-46. She further opined
13 Plaintiff has very poor attention/concentration/focus, he has unstable moods, is
14 labile, and irritable under pressure and experiences fatigue, and he is unable to
15 sustain mental energy longer than one to two hours. Tr. 746. Dr. Nelmark stated
16 Plaintiff's disability began winter of 2010, per Plaintiff's report, and the condition
17 is lifelong. Tr. 747. When presented only with the option to define the limitation
18 as none, mild, marked, or extreme (notably, a moderate option is missing), Dr.
19 Nelmark opined Plaintiff has marked limitations in his activities of daily living,
20 mild limitations in social functioning, and marked limitations in concentration,

1 persistence, or pace. Tr. 748. The ALJ found Dr. Nelmark's opinions were
2 unpersuasive. Tr. 24.

3 First, the ALJ found Dr. Nelmark did not sufficiently support her opinions
4 with a detailed explanation. Tr. 24. Supportability is one of the most important
5 factors an ALJ must consider when determining how persuasive a medical opinion
6 is. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). The more relevant objective
7 evidence and supporting explanations that support a medical opinion, the more
8 persuasive the medical opinion is. 20 C.F.R. §§ 404.1520c(c)(1), 416.920c(c)(1).
9 The ALJ noted Dr. Nelmark's "check-box form[s]" both stated her opinions were
10 based on "observation during treatment, review of medical records" without further
11 detail. Tr. 24. In the May opinion, Dr. Nelmark noted her observations and review
12 of the medical records supported her opinions regarding Plaintiff's limitations, Tr.
13 557-59, but she did not give any other explanation for the opinions. She further
14 explained Plaintiff had limitations in other capabilities, due to fatigue,
15 concentration, difficulty understanding, and difficulty with social interactions. Tr.
16 558. She stated work would likely be de-stabilizing, but did not say why, and only
17 provided Plaintiff's reported onset date rather than giving an opinion of when his
18 limitations began. Tr. 558-60. In the December opinion, Dr. Nelmark again wrote
19 her opinion was based on her observations and review of the medical records, and
20 listed Plaintiff's additional limitations due to impaired

1 attention/concentration/focus, mood instability, and fatigue. Tr. 746. However,
2 Dr. Nelmark also described the recent results of a mental status examination, and
3 gave examples of Plaintiff's restrictions. Tr. 747-48. Any error in the ALJ's
4 conclusion that Dr. Nelmark failed to provide a rationale for her opinions is
5 harmless as the ALJ gave other supported reasons to reject the opinions. *See*
6 *Molina*, 674 F.3d at 1115.

7 Second, the ALJ found Dr. Nelmark's opinions were inconsistent with her
8 treatment records. Tr. 24. Consistency is one of the most important factors an
9 ALJ must consider when determining how persuasive a medical opinion is. 20
10 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). The ALJ noted that while Dr.
11 Nelmark's records contain some abnormalities, such as a flat affect, they generally
12 contain normal findings, including normal affect, behavior, grooming, eye contact,
13 speech, psychomotor activity, thoughts, intelligence, and judgment. Tr. 24, 718-
14 21, 724-26, 732-33. When Plaintiff asked Dr. Nelmark to complete a disability
15 questionnaire in May 2018, Plaintiff reported everything was going well, he had a
16 stable mood, and he reported joining a band. Tr. 24 (citing Tr. 724-25). At the
17 May 2018 appointment, Plaintiff had a normal mental status examination except
18 reported hallucinations and paranoia at times. Tr. 725. Plaintiff later reported to
19 Dr. Nelmark on multiple occasions that he was busy with his band and music,
20 including writing music and making music videos. Tr. 24 (citing Tr. 726, 732,

785, 788). Although Plaintiff intermittently reported auditory hallucinations, mild paranoia, and mental fog, and had decreased concentration at some appointments, Tr. 731, 785, 787, he had intact cognition and concentration, and normal perception, at many appointments, Tr. 732-33, 766, 774, 777, 780. Even during visits where Plaintiff reported experiencing some ongoing symptoms, Plaintiff reported increasing his activity, such as a visit where he reported spending more time on music, including arranging and composing music for a college band, beginning to play trombone and write music for the class, and despite reported auditory hallucinations, Plaintiff otherwise had a normal mental status examination. Tr. 788. This was a specific and legitimate reason, supported by substantial evidence, to reject Dr. Nelmark's opinion. *See Holohan*, 246 F.3d at 1202; *Bray*, 554 at 1228.

Third, the ALJ found Dr. Nelmark's opinions were inconsistent with the opinions of State agency psychological consultants, Dr. Brown and Dr. Harrison. Tr. 24. Consistency and supportability are the two most important factors when considering the persuasiveness of medical opinions. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). As discussed *supra*, the ALJ reasonably found Dr. Nelmark's opinions were not consistent with the objective evidence. Like Dr. Sanchez's opinion, the ALJ reasonably found Dr. Brown and Dr. Harrison's opinions are more consistent with the evidence than Dr. Nelmark's opinion. This

1 was a specific and legitimate reason, supported by substantial evidence, to reject
2 Dr. Nelmark's opinion. *See Nguyen*, 100 F.3d at 1464. Plaintiff is not entitled to
3 remand on these grounds.

4 **B. Plaintiff's Symptom Claims**

5 Plaintiff faults the ALJ for failing to rely on clear and convincing reasons in
6 discrediting his symptom claims. ECF No. 16 at 15-18. An ALJ engages in a two-
7 step analysis to determine whether to discount a claimant's testimony regarding
8 subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must
9 determine whether there is objective medical evidence of an underlying
10 impairment which could reasonably be expected to produce the pain or other
11 symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted). "The
12 claimant is not required to show that [the claimant's] impairment could reasonably
13 be expected to cause the severity of the symptom [the claimant] has alleged; [the
14 claimant] need only show that it could reasonably have caused some degree of the
15 symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

16 Second, "[i]f the claimant meets the first test and there is no evidence of
17 malingering, the ALJ can only reject the claimant's testimony about the severity of
18 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the
19 rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
20 omitted). General findings are insufficient; rather, the ALJ must identify what

1 symptom claims are being discounted and what evidence undermines these claims.
2 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Thomas v.*
3 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
4 explain why it discounted claimant’s symptom claims)). “The clear and
5 convincing [evidence] standard is the most demanding required in Social Security
6 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
7 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

8 Factors to be considered in evaluating the intensity, persistence, and limiting
9 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
10 duration, frequency, and intensity of pain or other symptoms; 3) factors that
11 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
12 side effects of any medication an individual takes or has taken to alleviate pain or
13 other symptoms; 5) treatment, other than medication, an individual receives or has
14 received for relief of pain or other symptoms; 6) any measures other than treatment
15 an individual uses or has used to relieve pain or other symptoms; and 7) any other
16 factors concerning an individual’s functional limitations and restrictions due to
17 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §§
18 404.1529(c), 416.929(c). The ALJ is instructed to “consider all of the evidence in
19 an individual’s record,” to “determine how symptoms limit ability to perform
20 work-related activities.” SSR 16-3p, 2016 WL 1119029, at *2.

1 The ALJ found that Plaintiff's medically determinable impairments could
2 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's
3 statements concerning the intensity, persistence, and limiting effects of his
4 symptoms were not entirely consistent with the evidence. Tr. 20.

5 *1. Inconsistent Objective Medical Evidence*

6 The ALJ found Plaintiff's symptom claims were inconsistent with the
7 objective medical evidence. Tr. 20-21. An ALJ may not discredit a claimant's
8 symptom testimony and deny benefits solely because the degree of the symptoms
9 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261
10 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.
11 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch v. Barnhart*, 400
12 F.3d 676, 680 (9th Cir. 2005). However, the objective medical evidence is a
13 relevant factor, along with the medical source's information about the claimant's
14 pain or other symptoms, in determining the severity of a claimant's symptoms and
15 their disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2),
16 416.929(c)(2).

17 The ALJ found that the medical records during the relevant period do not
18 support Plaintiff's contention of disabling mental health limitations. Tr. 20.
19 Plaintiff began seeing treatment in January 2017, and reported finding treatment
20 helpful. *Id.* The ALJ noted Plaintiff had some ongoing symptoms, such as an

1 anxious affect, and reported hallucinations at times, but he otherwise generally had
2 normal mental status examinations. Tr. 20-22. At many appointments, even when
3 Plaintiff reported mental fatigue or hallucinations, Plaintiff had an otherwise
4 normal mental examination. Tr. 714, 724-25, 788. While Plaintiff alleges
5 significant sedation from his medication and impairments, the ALJ noted Plaintiff
6 reported improvement in the sedation over time, and Plaintiff frequently denied
7 any medication side effects. Tr. 21 (citing Tr. 525-28, 541). Plaintiff also reported
8 mental fog or impaired cognitive functioning and tremors due to his medications,
9 but later reported improvement in the side effects. Tr. 421, 699, 711. Plaintiff
10 argues the ALJ failed to point to specific inconsistencies between the objective
11 evidence and Plaintiff's claims, ECF No. 16 at 17, however the ALJ pointed to
12 multiple inconsistencies discussed herein. While Plaintiff's symptoms waxed and
13 waned, the ALJ's finding that the relatively benign objective findings was out of
14 proportion with and did not corroborate Plaintiff's report of severe restrictions is
15 reasonable. This was a clear and convincing reason, when combined with the other
16 reasons offered, to discount Plaintiff's symptom reports.

17 *2. Improvement with Treatment*

18 The ALJ found Plaintiff's symptom claims were inconsistent with Plaintiff's
19 improvement with treatment. Tr. 21-22. The effectiveness of treatment is a
20 relevant factor in determining the severity of a claimant's symptoms. 20 C.F.R. §§

1 404.1529(c)(3), 416.913(c)(3); *see Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d
2 1001, 1006 (9th Cir. 2006); *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir.
3 2008) (a favorable response to treatment can undermine a claimant's complaints of
4 debilitating pain or other severe limitations).

5 The ALJ found Plaintiff had improvement in his mental health symptoms
6 with treatment, and had sustained improvement beginning May 2017. Tr. 22. At
7 the time of Plaintiff's alleged onset date, he reported mood instability, anxiety,
8 impaired concentration/focus, impaired sleeping, and auditory hallucinations. Tr.
9 320-23. Plaintiff reported improvement throughout the relevant period, including
10 stating he was doing well, reporting improved sleep, a decrease in hearing voices,
11 and reporting that his symptoms were controlled by medication. Tr. 21, 336, 380,
12 545, 657, 668, 689, 699, 711, 724-25, 757, 776, 807. Plaintiff had multiple
13 medication adjustments, requiring changing medications and dosages to better
14 control his symptoms while minimizing side effects. Tr. 323, 421, 715, 753, 776.
15 In the summer of 2017, Plaintiff reported he was not having any intrusive
16 symptoms, he was not having any significant side effects, and he had improved
17 sleep, focus, and concentration. Tr. 545, 657, 673, 689, 693. In May 2018,
18 Plaintiff reported he felt more stable than he had felt in over seven years. Tr. 717.
19 Plaintiff reported continued delusions and paranoia in September 2018, but
20 reported he was coping with the symptoms, and he had a normal mental status

1 examination. Tr. 788. Plaintiff reported increasing his activities, including
2 socializing more, reading, exercising, and playing music. Tr. 438, 704, 732, 788,
3 805. Plaintiff argues the ALJ failed to consider the cyclical nature of Plaintiff's
4 symptoms, ECF No. 16 at 17-18, however while Plaintiff had periods of increased
5 symptoms, Plaintiff overall demonstrated continuing improvement over time. On
6 this record, the ALJ reasonably found Plaintiff's symptoms when treated were not
7 as severe as Plaintiff claimed. This was a clear and convincing reason to discount
8 Plaintiff's symptom reports.

9 *3. Activities of Daily Living*

10 The ALJ found Plaintiff's activities of daily living were inconsistent with
11 Plaintiff's symptom claims. Tr. 22. The ALJ may consider a claimant's activities
12 that undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can
13 spend a substantial part of the day engaged in pursuits involving the performance
14 of exertional or non-exertional functions, the ALJ may find these activities
15 inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,
16 674 F.3d at 1113. "While a claimant need not vegetate in a dark room in order to
17 be eligible for benefits, the ALJ may discount a claimant's symptom claims when
18 the claimant reports participation in everyday activities indicating capacities that
19 are transferable to a work setting" or when activities "contradict claims of a totally
20 debilitating impairment." *Molina*, 674 F.3d at 1112-13.

1 The ALJ found Plaintiff's activities demonstrate he can maintain
2 concentration and pace for at least simple tasks, he can tolerate routine social
3 interaction, and he can handle a variety of tasks and chances in routine. Tr. 22.
4 The ALJ noted Plaintiff engaged in musical performances with his band, wrote
5 music, made videos to go with the music, participated in a community college
6 music class, and was able to drive, shop, prepare meals, meet up with friends at
7 their homes or at bars, bicycle, skateboard, exercise, and watch television. *Id.*
8 (citing, e.g., 704-06, 725, 732, 749, 785). Plaintiff also began studying for a
9 technology support certification. Tr. 22, 689, 693. While Plaintiff testified he is
10 largely sedentary, he reported to providers that he was walking a lot, going to the
11 gym daily, and exercising regularly. Tr. 22, 438, 531, 549, 663, 704-06. Plaintiff
12 argues his activities do not demonstrate he could sustain work, ECF No. 16 at 17-
13 18, however the ALJ identified multiple inconsistencies between Plaintiff's
14 allegations and his activities. On this record, the ALJ reasonably concluded that
15 Plaintiff's activities of daily living were inconsistent with Plaintiff's symptom
16 claims. This finding is supported by substantial evidence and was a clear and
17 convincing reason to discount Plaintiff's symptom complaints. Plaintiff is not
18 entitled to remand on these grounds.

1 **CONCLUSION**

2 Having reviewed the record and the ALJ's findings, the Court concludes the
3 ALJ's decision is supported by substantial evidence and free of harmful legal error.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. The District Court Executive is directed to substitute Kilolo Kijakazi as
6 Defendant and update the docket sheet.

7 2. Plaintiff's Motion for Summary Judgment, **ECF No. 16**, is **DENIED**.

8 3. Defendant's Motion for Summary Judgment, **ECF No. 18**, is
9 **GRANTED**.

10 4. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

11 The District Court Executive is directed to file this Order, provide copies to
12 counsel, and **CLOSE THE FILE**.

13 DATED July 15, 2021.

14 s/Mary K. Dimke
15 MARY K. DIMKE
16 UNITED STATES MAGISTRATE JUDGE
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